IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1827 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PETROLEUM EMPLOYEES UNION

Versus

GROUP GENERAL MANAGER

Appearance:

MR BR GUPTA for Petitioner

M/S TRIVEDI & GUPTA for Respondent No. 1

MR UI VYAS for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 14/02/2000

ORAL JUDGEMENT

1. This is a petition filed on behalf of 27 persons who allege to be contract workers, in respect of whom certain rights were created by judgement of this Court in

Special Civil Application Nos. 2573/97, 2571/97 etc., a copy of the High Court's common judgement being at Annexure `B' to the present petition. The sum and substance of the decision on which the present 27 petitioners rely deals with the resolution of a factual controversy which was before the High Court in those petitions. The question was whether the employees concerned in those petitions were entitled to regularization, as contract workers, by virtue of certain specific notifications issued by the Central Government, in respect of the industries where employment of contract labour was prohibited.

In para 12 of the said decision, this Court dealt with the aspect of whether those employees who claim absorption are all employees who are covered by the categories in respect of which contract labour has been abolished, in the context of the controversy that all such employees are not covered.

For this reason, the High Court, in the said judgement, issued appropriate directions to the Regional Labour Commissioner [Central], Ahmedabad to verify the cases of the concerned employees as to whether they belong to or do not belong to the categories in respect of which contract labour has been abolished.

In this context, the High Court in the said decision broadly set out only by way of a guideline, the procedure which could be followed by the Regional Labour Commissioner [Central], Ahmedabad, the net and final direction being that he shall prepare a list of those employees on the basis of data before him who are covered by the notifications, and would therefore be entitled to regularization / absorption.

Thus, the Regional Labour Commissioner [Central], Ahmedabad has in fact undergone this exercise and has prepared a report on the basis of which it is found that 70 employees are entitled to regularization and absorption, and so far as the other 28 employees are concerned, he has found that, in the absence of appropriate, relevant and adequate factual data on record, it is not possible to state that they are entitled to regularization / absorption.

2. The present petition seeks to challenge the findings as regards these 28 workmen who are apparently left out, although the petition is filed on behalf of only 27 of such persons. Learned counsel for the petitioner seeks to raise a number of grounds for raising

the dispute here such as, lack of opportunity to produce evidence, opportunity of hearing, adequacy of the evidentiary material etc.

3. So far as the adequacy of evidentiary material is concerned, it is not for this Court to decide whether the material before the Designated Authority was sufficient or insufficient to reach a conclusion as to whether the concerned workman as an individual would be covered by the relevant notification or not. It was precisely because the application of the notification required a detailed examination of facts in the case of each individual workman, that the High Court in the previous decision decided to refer the matter to the Designated Authority. To once again re-agitate the question of adequacy of evidentiary material before this Court would be an exercise in futility, inasmuch as the jurisdiction of this Court under Article 226 of the Constitution is not to enter into the adequacy of evidentiary material, or its application, or the conclusions which can or cannot be drawn from such material.

Learned counsel for the petitioner also sought to contend that he was not given an opportunity of hearing etc.

4. On the face of the report of the Designated Authority, it becomes obvious [on internal page 3 of the said report] that, "The union representatives of Petroleum Employees Union even after giving ample opportunities, filed affidavits only for 98 employees". Thus, the Designated Authority could take into consideration the cases of only these 98 employees and could not take into consideration those cases in which even basic material for starting the exercise of evaluation was not supplied. After having considered the cases of these 98 workmen who filed their affidavits, other evidentiary material was considered in relation to these 98 persons, and in this context, the Designated Authority found that 70 workmen were entitled to absorption as regular employees. If the petitioner union chose not to furnish data inspite of being given ample opportunities, certainly the fault cannot be found with the Designated Authority.

It was then sought to be contended that an oral hearing was not given before finalization of the report. This is neither here nor there. It is nowhere pointed out or in fact even asserted that an oral hearing before preparation of the report was specifically requested, and that such a request was either rejected or ignored. It

must be borne in mind that the principles of natural justice require not the positive act of furnishing an opportunity of hearing, but ruling out the negative act of denying an opportunity of hearing. Thus, unless a denial of the right of hearing is asserted and established, there cannot possibly be any presumption that principles of natural justice have been violated.

Furthermore, an oral hearing before the Authority is not contemplated by the earlier High Court decision.

5. In any case, the sum and substance of the aforesaid decision of the High Court, in its conclusion, also lays down the rights of the employees who are not happy with the report [as and when filed]. Clause 8 of para 13 of the said judgement clearly specifies that those employees who are dissatisfied with the report, may challenge the same in the appropriate forum in accordance with law. In this context, learned counsel for the petitioner concedes that their right to challenge the same before the Labour Court is open and the same is yet to be exercised.

6. On the premises aforesaid, therefore, I do not see any justification for interfering with the report of the Designated Authority, and / or to consider the consequential reliefs sought in the present petition.

7. This petition is accordingly dismissed and notice is discharged with no orders as to costs.

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